

thicknesses is bounded at the upper end to 5 mil.

19. The insect control member as in claim 3, wherein the range of material thicknesses is bounded at the upper end to 5 mil.

20. The insect control member as in claim 5, wherein the range of material thicknesses is bounded at the upper end to 5 mil.

21. The insect control member as in claim 9, wherein the range of material thicknesses is bounded at the upper end to 5 mil. --

REMARKS

This is in response to the Office Action mailed October 3, 2002. Claims 1-5 and 17-21 are now pending. Claim 16 was previously canceled as being directed to an unelected species, and claims 17-21 have been added by this Amendment. No fee is due.

The Examiner has rejected claims 1-3, 5-7, 9-11 and 15 as anticipated by Flashinski et al. (U.S. Patent No. 6,360,477); claims 1 and 12-14 as anticipated by Stout et al. (U.S. Patent No. 4,411,093); claim 4 as obvious over Flashinski et al.; and claim 8 as obvious over Flashinski et al. in view of Greenberg (U.S. Patent No. 4,202,129). Applicants respectfully traverse these rejections.

{M:\3031\0J066\DL5947.DOC;1}
Serial No. 09/924,007

Docket No. 3031/0J066

Section 102(b) Rejection over Flashinski et al.

Flashinski et al. describe an insect control pouch in which a polymeric film serves as a substrate from which a volatile insect control agent can evaporate. The Examiner cites to the substrate (12) as having "a thickness and flexural modulus and an insect-interactive material (14) supported on the substrate." The Examiner is correct in noting that any substrate has a thickness and a flexural modulus. The Examiner also correctly observed that the substrate of Flashinski et al. supports a volatile insect control agent. However, Applicants submit that claim 1 defines patentably over the teachings of Flashinski et al. Claim 1 is reprinted below, with a material limitation of that claim shown in emphasized text:

1. A disposable insect control member, comprising:
a substrate having a thickness and a flexural modulus, *one of the thickness and the flexural modulus being defined by the other so as to satisfy a prescribed criterion*; and
an insect-interactive material supported on the substrate.

The Flashinski et al. patent is completely silent as to the flexural modulus or tensile strength of the materials it uses for its substrate. The particular thickness used by Flashinski et al. is not defined by the flexural modulus at all; rather, that patent calls for thickness being selected to constitute a pouch that is vapor impermeable, heat sealable, and having suitable relatively non-absorbent surfaces that can be coated with an active composition. *There is no teaching or suggestion in Flashinski et al. that the*

value of one of the claimed material properties be defined by the value of the other in order to satisfy a prescribed criterion.

In contrast, the subject application emphasizes the relationship between these two material properties. Quoting from the Specification:

The material properties of the supporting substrate 12 comprise an important aspect of the present invention. We have discovered a relationship between the flexural modulus and the thickness of a material to be used (as measured in a direction normal to the insect- engagement surface 14) which permits selection of a suitable material composition for the substrate 12. Likewise, the relationship we discovered permits a suitable substrate to be specified in terms of thickness when a material composition has already been selected. The relationship permits the substrate to be generally optimally adapted to radiate pressure waves from a vibration generator to which it can be coupled in order to lure or repel insects when placed into service. Fig. 7 illustrates this relationship between flexural modulus and thickness for a variety of materials that can be used as the supporting substrate 12 of the insect control member 10. While Fig. 7 utilizes flexural modulus as the basis for the selection, other bases can be used, such as tensile strength.

Page 6, lines 23 *et seq.* of the Specification. The prescribed criterion can be, for example, a thickness to flexural modulus ratio (see claim 2) which, as illustrated in Fig. 7 is generally linear for a variety of materials. The patent specification explains the consequences of using a material that is too thick or too thin, but most pertinent to the overcoming the anticipation rejection is that ***claim 1 requires a purposeful***

¹ In any event, Flashinski et al. describe preferred materials for the substrate as being "1.0 mm to 3.0 mm thick films". This thickness corresponds to a range of 39.37 mil to 118.11 mil -- thickness values which represent (for many suitable substrate materials) a material that would dampen vibrations and not be suitable for the claimed insect control member.

relationship between thickness and flexural modulus such that the value of one of these material properties is defined by the value of the other in order to satisfy a prescribed criterion. Accordingly, withdrawal of the rejection of the claims as being anticipated by Flashinski et al. is requested.

Section 102(b) Rejection over Stout et al.

Claim 1 was also rejected as being anticipated by the Stout et al. patent. That patent describes an insect lure and, like the Flashinski et al. patent, is silent with regard to flexural modulus, tensile strength and any relationship of those material properties to thickness. A variety of formulations are disclosed for the insect lure, but the thickness of the supporting surface (which in the case of Stout et al. is a lamination of papers and laquers) is not even disclosed. Consequently, there can be no anticipation of claim 1 by the Stout et al. patent as it completely fails to disclose or suggest any relationship between the material properties recited in claim 1. Accordingly, withdrawal of the rejection of the claims as being anticipated by Stout et al. is requested.

Section 103 Rejections over Flashinski et al.

Because the Flashinski et al. patent fails to teach or suggest the claimed relationship between two material properties, the rejection of dependent claims 4 and 8 as being obvious over Flashinski et al., alone or in combination with other documents, cannot be sustained. Accordingly, withdrawal of the rejection of the claims as being rendered obvious by Flashinski et al. is requested.

Dated: December 26, 2002

DARBY & DARBY
805 Third Avenue
New York, NY 10022
(212) 527-7700

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Leason', with a long horizontal flourish extending to the right.

David Leason
Registration No. 36,195
Attorney for Applicant(s)